IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCOS L MUSQUEZ,)
Plaintiff(s),	No C 07-0809 VRW (PR)
vs.	ORDER OF DISMISSAL
MAILROOM CLERKS 1-4, et al, Defendant(s).) (Doc # 2))))

Plaintiff, a prisoner at the Santa Clara County Jail and frequent litigant in this court, filed a pro se civil rights complaint under 42 USC § 1983 alleging that jail officials are not delivering his mail to him. Plaintiff claims that this constitutes a violation of his First Amendment rights and a breach of a previous settlement agreement between him and jail officials.

In subsequent filings, plaintiff has made clear that although he had not exhausted available administrative remedies when he filed this action back in February 2007, he has done so now.

Unfortunately for plaintiff, the instant action must be DISMISSED without prejudice to refiling a new action because it is well-established that a prisoner action must be dismissed unless the prisoner exhausted his available administrative remedies <u>before</u> he filed suit, even if the prisoner fully exhausts

1	while the suit is pending. McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir.
2	2002); see also Vaden v. Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006)
3	(where administrative remedies are not exhausted before the prisoner sends his
4	complaint to the court it will be dismissed even if exhaustion is completed by the
5	time the complaint is actually filed).
6	The clerk shall enter judgment in accordance with this order and terminate
7	all pending motions (see, eg, doc # 2) as moot. No filing fee is due.
8	SO ORDERED.
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0	VAUGHN R WALKER
1	United States District Chief Judge
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